

ASSEMBLY BILL

No. 199

Introduced by Assembly Member Oropeza

(Principal coauthors: Senators Alarcon, Romero, and Torlakson)

January 28, 2003

An act to add Chapter 7 (commencing with Section 99560) to Part 11 of Division 10 of the Public Utilities Code, relating to transit employer-employee relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 199, as introduced, Oropeza. Public transit employer-employee relations.

Existing law contains provisions relating to employer-employee relations between the state and its employees, public schools and their employees, local public agencies and their employees, and postsecondary educational institutions and their employees. Existing laws provide these public employees with the right to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations. The selected employee organization has the right to represent its members on all matters of employer-employee relations, including disputes.

Existing law also prescribes the powers and duties of public transit districts, including administering employer-employee relations. The courts have held that the Meyers-Milias Brown Act, pertaining to employer-employee relations between local public agencies and their employees, does not apply to public transit districts that have a statutorily prescribed method of administering employer-employee relations that was in existence at the time the Meyers-Milias Brown Act was enacted.

This bill would establish the Public Transit Employer-Employee Relations Act to give supervisory employees of public transit districts the right to form, join, and participate in the activities of employee organizations of their own choosing for the purposes of representation on all employer-employee relations matters and meeting and conferring and to enter into memorandum of understanding for these purposes. The bill would prescribe the procedure to recognize, certify, and decertify employee organizations, make unit determinations, review unit determinations by the judiciary, pay fair share fees, and arbitrate disputes.

The bill would require the Public Employment Relations Board to administer these provisions and would enumerate its duties. The bill would make it a misdemeanor for any person to resist, prevent, impede, or interfere willfully with any member of the board, or its agents, in the performance of its duties under these provisions. By creating a new crime this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 7 (commencing with Section 99560) is
2 added to Part 11 of Division 10 of the Public Utilities Code, to read:

3

4 CHAPTER 7. TRANSIT EMPLOYER-EMPLOYEE RELATIONS

5

6 Article 1. General Provisions

7

8 99560. The Legislature hereby finds and declares that:

9 (a) The people of this state have a fundamental interest in the
10 development of harmonious and cooperative labor relations
11 between public transit districts and their employees.



1 (b) Public transit districts are not subject to a common
2 statewide statutory scheme or an administrative agency that has
3 jurisdiction over the conduct of employer-employee relations.

4 (c) Other public sector employees in the state have been
5 granted the opportunity for collective bargaining through the
6 adoption of The Meyers-Milias Brown Act (Chapter 10
7 (commencing with Section 3500) of Division 4 of Title 1 of the
8 Government Code), the Ralph C. Dills Act (Chapter 10.3
9 (commencing with Section 3512) of Division 4 of Title 1 of the
10 Government Code), the Educational Employment Relations Act
11 (Chapter 10.7 (commencing with Section 3540) of Division 4 of
12 Title 1 of the Government Code), and the Higher Education
13 Employer-Employee Relations Act (Chapter 12 (commencing
14 with Section 3560) of Division 4 of Title 1 of the Government
15 Code), and it would be advantageous and desirable to expand the
16 jurisdiction of the Public Employment Relations Board to cover
17 the employees of public transit districts.

18 (d) The people and the public transit district employers each
19 have a fundamental interest in the preservation and promotion of
20 the responsibilities granted by the people of this state. Harmonious
21 relations between each public transit district employer and its
22 employees are necessary to that endeavor.

23 (e) It is the purpose of this chapter to provide the means by
24 which relations between each public transit district employer and
25 its employees may assure that the responsibilities and authorities
26 granted to each transit district by statute are carried out in an
27 atmosphere that permits the fullest participation by employees in
28 the determination of conditions of employment which affect them.
29 It is the intent of this chapter to accomplish this purpose by
30 providing a uniform basis for recognizing the right of the
31 employees of these transit districts to full freedom of association,
32 self-organization, and designation of representatives of their own
33 choosing for the purpose of representation in their employment
34 relationships with their employers and to select one employee
35 organization as their exclusive representative for the purpose of
36 meeting and conferring.

37 (f) It is the further purpose of this chapter to provide orderly
38 and clearly defined procedures for meeting and conferring and the
39 resolution of impasses, and to define and prohibit certain practices
40 that are inimical to the public interest.

1 99560.1. As used in this chapter, the following words have the
2 following meanings:

3 (a) “Arbitration” means a method of resolving a rights dispute
4 under which the parties to a controversy must accept the award of
5 a third party.

6 (b) “Board” means the Public Employment Relations Board
7 established pursuant to Section 3541 of the Education Code.

8 (c) “Certified organization” means an employee organization
9 that has been certified by the board as the exclusive representative
10 of the public transit district employees in an appropriate unit after
11 a proceeding under Article 5 (commencing with Section 99564).

12 (d) “Confidential employee” means any employee who is
13 required to develop or present management positions with respect
14 to meeting and conferring or whose duties normally require access
15 to confidential information that contributes significantly to the
16 development of those management positions.

17 (e) “Employee” or “transit district employee” means any
18 supervisory employee of any public transit district employer
19 except for confidential employees.

20 (f) (1) “Employee organization” means any organization of
21 any kind in which public transit district employees participate and
22 that exists for the purpose, in whole or in part, of dealing with
23 public transit district employers concerning grievances, labor
24 disputes, wages, hours, and other terms and conditions of
25 employment of employees.

26 (2) “Employee organization” shall also include any person
27 that an employee organization authorizes to act on its behalf

28 (g) “Employer” or “transit district employer” means the
29 governing board of a public transit district, including any person
30 acting as an agent of an employer.

31 (h) “Employer representative” means any person or persons
32 authorized to act in behalf of the employer.

33 (i) “Exclusive representative” means any recognized or
34 certified employee organization or person it authorizes to act on its
35 behalf.

36 (j) “Impasse” means that the parties have reached a point in
37 meeting and conferring at which their differences in positions are
38 such that further meetings would be futile.

1 (k) “Managerial employee” means any employee having
2 significant responsibilities for formulating or administering
3 policies and programs of the public transit district.

4 (l) “Mediation” means the efforts of a third person, or persons,
5 functioning as intermediaries, to assist the parties in reaching a
6 voluntary resolution to an impasse.

7 (m) “Meet and confer” means the performance of the mutual
8 obligation of the public transit district employer and the exclusive
9 representative of the public transit district employees to meet at
10 reasonable times and to confer in good faith with respect to matters
11 within the scope of representation and to endeavor to reach
12 agreement on matters within the scope of representation. The
13 process shall include adequate time for the resolution of impasses.
14 If agreement is reached between representatives of the public
15 transit district employer and the exclusive representative, they
16 shall jointly prepare a written memorandum of the understanding,
17 which shall be presented to the transit district employer for
18 concurrence. However, these obligations shall not compel either
19 party to agree to any proposal or require the making of a
20 concession.

21 (n) “Person” means one or more individuals, organizations,
22 associations, corporations, boards, committees, commissions,
23 agencies, or their representatives.

24 (o) “Recognized organization” means an employee
25 organization that has been recognized by an employer as the
26 exclusive representative of the employees in an appropriate unit
27 pursuant to Article 5 (commencing with Section 99564).

28 (p) “Supervisory employee” means any employee of a public
29 transit district, regardless of job description, having authority in
30 the interest of the employer to hire, transfer, suspend, lay off,
31 recall, promote, discharge, assign, reward, or discipline other
32 employees, or the responsibility to assign work to and direct them,
33 or to adjust their grievances, or effectively recommend such action
34 if, in connection with these functions, the exercise of that authority
35 is not of a merely routine or clerical nature, but requires the use of
36 independent judgment.

37 99560.2. This act shall be known and may be referred to as the
38 Public Transit Employer-Employee Relations Act.
39

Article 2. Administration

99561. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties, and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall the lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the

1 refusal to obey a subpoena. Upon issuance of a complaint charging
2 that any person has engaged in or is engaging in an unfair practice,
3 the board may petition the court for appropriate temporary relief
4 or restraining order.

5 (j) To delegate its powers to any member of the board or to any
6 person appointed by the board for the performance of its functions,
7 except that no fewer than two board members may participate in
8 the determination of any ruling or decision on the merits of any
9 dispute coming before it, and except that a decision to refuse to
10 issue a complaint shall require the approval of two board members.

11 (k) To decide contested matters involving recognition,
12 certification, or decertification of employee organizations.

13 (l) To consider and decide issues relating to rights, privileges,
14 and duties of an employee organization in the event of a merger,
15 amalgamation, or transfer of jurisdiction between two or more
16 employee organizations.

17 (m) To take any other action as the board deems necessary to
18 discharge its powers and duties and otherwise to effectuate the
19 purposes of this chapter.

20 99561.1. Any person who shall willfully resist, prevent,
21 impede, or interfere with any member of the board, or any of its
22 agents, in the performance of duties pursuant to this chapter, shall
23 be guilty of a misdemeanor, and, upon conviction thereof, shall be
24 sentenced to pay a fine of not more than one thousand dollars
25 (\$1,000).

26 99561.2. The initial determination as to whether the charges
27 of unfair practices are justified, and, if so, what remedy is
28 necessary to effectuate the purposes of this chapter, shall be a
29 matter within the exclusive jurisdiction of the board. Procedures
30 for investigating, hearing, and deciding these cases shall be
31 devised and promulgated by the board.

32 (a) Any employee, employee organization, or employer shall
33 have the right to file an unfair practice charge, except that the board
34 shall not issue a complaint in respect of any charge based upon an
35 alleged unfair practice occurring more than six months prior to the
36 filing of the charge.

37 (b) The board shall not have authority to enforce agreements
38 between the parties, and shall not issue a complaint on any charge
39 based on alleged violation of such an agreement that would not
40 also constitute an unfair practice under this chapter.

1 99561.3. The board shall have the power to issue a decision
2 and order directing an offending party to cease and desist from the
3 unfair practice and to take affirmative action, that includes but is
4 not limited to, the reinstatement of employees with or without back
5 pay, that will effectuate the policies of this chapter.

6
7 Article 3. Judicial Review
8

9 99562. (a) No employer or employee organization shall have
10 the right to judicial review of a unit determination except: (1) when
11 the board in response to a petition from an employer or employee
12 organization agrees that the case is one of special importance and
13 joins in the request for such review; or (2) when the issue is raised
14 as a defense to an unfair practice complaint. A board order
15 directing an election shall not be stayed pending judicial review.

16 Upon receipt of a board order joining in the request for judicial
17 review, a party to the case may petition for a writ of extraordinary
18 relief from the unit determination decision or order.

19 (b) Any charging party, respondent, or intervenor aggrieved by
20 a final decision or order of the board in an unfair practice case,
21 except a decision of the board not to issue a complaint in the case,
22 may petition for a writ of extraordinary relief from the decision or
23 order.

24 (c) The petition shall be filed in the district court of appeal in
25 the appellate district where the unit determination or unfair
26 practice dispute occurred. The petition shall be filed within 30
27 days after issuance of the board's final order, order denying
28 reconsideration, or order joining in the request for judicial review,
29 as applicable. Upon the filing of the petition, the court shall cause
30 notice to be served upon the board and thereafter shall have
31 jurisdiction of the proceeding. The board shall file in the court the
32 record of the proceeding, certified by the board, within 10 days
33 after the clerk's notice unless the filing period is extended by the
34 court for good cause shown. The court shall have jurisdiction to
35 grant to the board any temporary relief or restraining order it
36 deems just and proper and in like manner to make and enter a
37 decree enforcing, modifying, or setting aside the order of the
38 board. The findings of the board with respect to questions of fact,
39 including ultimate facts, if supported by substantial evidence on
40 the record considered as a whole, are conclusive. The provisions

1 of Title 1 (commencing with Section 1067) of Part 3 of the Code
2 of Civil Procedure relating to writs shall, except where specifically
3 superseded by this article, apply to proceedings pursuant to this
4 section.

5 (d) If the time to petition for extraordinary relief from a board
6 decision has expired, the board may seek enforcement of any final
7 decision or order in a district court of appeal or a superior court in
8 the district where the unit determination or unfair practice case
9 occurred. If, after hearing, the court determines that the order was
10 issued pursuant to procedures established by the board and that the
11 person or entity refuses to comply with the order, the court shall
12 enforce the order by writ of mandamus. The court shall not review
13 the merits of the order.

14
15 Article 4. Rights, Obligations, Prohibitions, and Unfair Labor
16 Practices
17

18 99563. Transit district employees shall have the right to form,
19 join, and participate in the activities of employee organizations of
20 their own choosing for the purpose of representation on all matters
21 of employer-employee relations and for the purpose of meeting
22 and conferring. Transit district employees shall also have the right
23 to refuse to join employee organizations or to participate in the
24 activities of these organizations subject to the organizational
25 security provision permissible under this chapter.

26 99563.1. Subject to reasonable regulations, employee
27 organizations shall have the right of access at reasonable times to
28 areas in which employees work, the right to use transit district
29 bulletin boards, mailboxes and other means of communication,
30 and the right to use transit district facilities at reasonable times for
31 the purpose of meetings concerned with the exercise of the rights
32 guaranteed by this chapter.

33 99563.2. A reasonable number of representatives of an
34 exclusive representative shall have the right to receive reasonable
35 periods of released or reassigned time without loss of
36 compensation when engaged in meeting and conferring and for the
37 processing of grievances prior to the adoption of the initial
38 memorandum of understanding. When a memorandum of
39 understanding is in effect, released or reassigned time shall be in
40 accordance with the memorandum.

1 99563.3. Transit district employers, or the representatives as
2 they may designate, shall engage in meeting and conferring with
3 the employee organization selected as exclusive representative of
4 an appropriate unit on all matters within the scope of
5 representation.

6 99563.4. (a) The scope of representation shall include all
7 matters relating to employment conditions and
8 employer-employee relations, including, but not limited to,
9 wages, hours, and other terms and conditions of employment.

10 (b) Notwithstanding subdivision (a), the scope of
11 representation shall not include consideration of the merits,
12 necessity, or organization of any service or activity provided by
13 law or executive order.

14 99563.5. The duty to meet and confer in good faith requires
15 the parties to begin negotiations prior to the adoption of the final
16 budget for the ensuing year sufficiently in advance of the adoption
17 date so there is adequate time for agreement to be reached, or for
18 the resolution of impasse.

19 99563.6. It shall be unlawful for the transit district employer
20 to do any of the following:

21 (a) Impose or threaten to impose reprisals on employees, to
22 discriminate or threaten to discriminate against employees, or
23 otherwise to interfere with, restrain, or coerce employees because
24 of their exercise of rights guaranteed by this chapter. For purposes
25 of this subdivision, “employee” includes an applicant for
26 employment or reemployment.

27 (b) Deny to employee organizations rights guaranteed to them
28 by this chapter.

29 (c) Refuse or fail to meet and confer with an exclusive
30 representative.

31 (d) Dominate or interfere with the formation or administration
32 of any employee organization, or contribute financial or other
33 support to it, or in any way encourage employees to join any
34 organization in preference to another. However, subject to rules
35 and regulations adopted by the board pursuant to Section 99561,
36 an employer shall not be prohibited from permitting employees to
37 engage in meeting and conferring or consulting during working
38 hours without loss of pay or benefits.

39 (e) Refuse to participate in good faith in the impasse procedure
40 set forth in Article 9 (commencing with Section 99568).

1 99563.7. It shall be unlawful for an employee organization to:

2 (a) Cause or attempt to cause the transit district employer to
3 violate Section 99563.6.

4 (b) Impose or threaten to impose reprisals on employees, to
5 discriminate or threaten to discriminate against employees, or
6 otherwise to interfere with, restrain, or coerce employees because
7 of their exercise of rights guaranteed by this chapter.

8 (c) Refuse or fail to meet and confer with the transit district
9 employer.

10 (d) Refuse to participate in good faith in the impasse procedure
11 set forth in Article 9 (commencing with Section 99568).

12
13 Article 5. Employee Organizations: Representation,
14 Recognition, Certification, and Decertification
15

16 99564. An employee organization may become the exclusive
17 representative for the employees of an appropriate unit for
18 purposes of meeting and conferring by filing a request with a
19 transit district employer alleging that a majority of the employees
20 in an appropriate unit wish to be represented by the organization
21 and asking the employer to recognize it as the exclusive
22 representative. The request shall describe the grouping of jobs or
23 positions that constitute the unit claimed to be appropriate and
24 shall certify that proof of majority support has been submitted to
25 either the board or to a mutually agreed upon third party. Notice
26 of any such request shall immediately be posted conspicuously on
27 all employee bulletin boards in each facility of the employer in
28 which members of the unit claimed to be appropriate are
29 employed.

30 99564.1. The transit district employer shall grant a request for
31 recognition filed pursuant to Section 99564 except in one of the
32 following circumstances:

33 (a) The employer reasonably doubts that the employee
34 organization has majority support or reasonably doubts the
35 appropriateness of the requested unit. In that case the employer
36 shall notify the board which shall conduct a representation election
37 pursuant to Section 99564.4 unless subdivision (c) or (d) applies.

38 (b) Another employee organization either files with the
39 employer a challenge to the appropriateness of the unit or submits
40 a competing claim of representation within 15 workdays of the

1 posting of notice of the written request. If the claim is evidenced
2 by the support that at least 30 percent of the members of the
3 proposed unit, a question of representation shall be deemed to exist
4 and the board shall conduct a representation election pursuant to
5 Section 99564.4, or if the claim is evidenced by the support of at
6 least 10 percent of the members of the proposed unit, the board
7 shall conduct inquiries and investigations or hold hearings that it
8 deems necessary in order to decide the questions raised by the
9 claim and may conduct a representation election pursuant to
10 Section 99564.4. Evidence of that support shall be submitted to
11 either the board or to a mutually agreed upon third party.

12 (c) There is currently in effect a lawful written memorandum
13 of understanding between the employer and another employee
14 organization recognized or certified as the exclusive
15 representative of any employees included in the unit described in
16 the request for recognition, unless the request for recognition is
17 filed not more than 120 days and not less than 90 days prior to the
18 expiration date of such memorandum of understanding. However,
19 if a memorandum of understanding has been in effect for three
20 years or more, there shall be no restriction as to the time of filing
21 the request.

22 (d) Within the previous 12 months either another employee
23 organization has been lawfully recognized or certified as the
24 exclusive representative of any employees included in the unit
25 described in the request for recognition, or a majority of the votes
26 cast in a representation election held pursuant to Section 3553.4
27 were cast for “no representation.”

28 99564.2. A petition may be filed with the board, in
29 accordance with its rules and regulations, requesting it to
30 investigate and decide the question of whether employees have
31 selected or wish to select an exclusive representative or to
32 determine the appropriateness of a unit, by one of the following:

33 (a) An employee organization alleging that it has filed a request
34 for recognition as an exclusive representative with an employer
35 and that the request has been denied or has not been acted upon
36 within 30 days after the filing of the request.

37 (b) An employee organization alleging that it has filed a
38 competing claim of representation pursuant to subdivision (b) of
39 Section 99564.1.



1 (c) An employee organization wishing to be certified by the
2 board as the exclusive representative. The petition for certification
3 as the exclusive representative in an appropriate unit shall include
4 proof of a 30 percent showing of interest designating the
5 organization as the exclusive representative of the employees.

6 99564.3. A petition may be filed with the board, in
7 accordance with its rules and regulations, requesting it to
8 investigate and decide the question of whether the employees wish
9 to decertify an exclusive representative or to reconsider the
10 appropriateness of a unit. The petition may allege that the
11 employees in an appropriate unit no longer desire a particular
12 employee organization as their exclusive representative. If that
13 petition is supported by 30 percent of the employees in the unit
14 indicating support for another organization or lack of support for
15 the incumbent exclusive representative.

16 99564.4. (a) Upon receipt of a petition filed pursuant to
17 Section 99564.2 the board shall conduct inquiries and
18 investigations or hold hearings as it deems necessary in order to
19 decide the questions raised by the petition. The determination of
20 the board may be based upon the evidence adduced in the inquiries,
21 investigations, or hearings. If the board finds on the basis of the
22 evidence that a question of representation exists, or a question of
23 representation is deemed to exist pursuant to subdivision (a) or (b)
24 of Section 99564.1, it shall order that an election shall be
25 conducted by secret ballot placing on the ballot all employee
26 organizations evidencing support of at least 10 percent of the
27 members of an appropriate unit, and it shall certify the results of
28 the election on the basis of which ballot choice received a majority
29 of the valid votes cast. There shall be printed on the initial ballot
30 the choice of “no representation.” If at any election no choice on
31 the ballot receives a majority of the votes cast, a runoff election
32 shall be conducted. The ballot for the runoff election shall provide
33 for a selection between the two choices receiving the largest and
34 second largest number of valid votes cast in the election.

35 (b) No election shall be held and the petition shall be dismissed
36 whenever either of the following exists:

37 (1) There is currently in effect a memorandum of
38 understanding between the employer and another employee
39 organization recognized or certified as the exclusive
40 representative of any employees included in the unit described in

1 the petition, unless the petition is filed not more than 120 days and
2 not less than 90 days prior to the expiration date of the
3 memorandum. However, if the memorandum has been in effect for
4 three years or more, there shall be no restriction as to time of filing
5 the petition.

6 (2) Within the previous 12 months either an employee
7 organization other than the petitioner has been lawfully
8 recognized or certified as the exclusive representative of any
9 employees included in the unit described in the petition, or a
10 majority of the votes cast in a representation election field pursuant
11 to subdivision (a) were cast for “no representation.”

12 99564.5. The employee organization recognized or certified
13 as the exclusive representative shall represent all employees in the
14 unit, fairly and impartially. A breach of this duty shall be deemed
15 to have occurred if the employee organization’s conduct in
16 representation is arbitrary, discriminatory, or in bad faith.

17
18 Article 6. Unit Determination
19

20 99565. (a) In each case where the appropriateness of a unit is
21 an issue, in determining an appropriate unit, the board shall take
22 into consideration all of the following criteria:

23 (1) The internal and occupational community of interest
24 among the employees, including, but not limited to, the extent to
25 which they perform functionally related services or work toward
26 established common goals, the history of employee representation
27 with the employer, the extent to which the employees belong to the
28 same employee organization, the extent to which the employees
29 have common skills, working conditions, job duties, or similar
30 educational or training requirements, and the extent to which the
31 employees have common supervision.

32 (2) The effect that the projected unit will have on the meet and
33 confer relationships, emphasizing the availability and authority of
34 employer representatives to deal effectively with employee
35 organizations representing the unit, and taking into account factors
36 such as work location, the numerical size of the unit, the
37 relationship of the unit to organizational patterns of the transit
38 district employer, and the effect on the existing classification
39 structure or existing classification schematic of dividing a single
40 class or single classification schematic among two or more units.

1 (3) The effect of the proposed unit on efficient operations of the
2 employer and the compatibility of the unit with the responsibility
3 of the transit district employer and its employees to serve the
4 public.

5 (4) The number of employees and classifications in a proposed
6 unit, and its effect on the operations of the employer, on the
7 objectives of providing the employees the right to effective
8 representation, and on the meet and confer relationship.

9 (5) The impact on the meet and confer relationship created by
10 fragmentation of employee groups or any proliferation of units
11 among the employees of the employer.

12 (b) The board shall not determine that any unit is appropriate
13 if it includes, together with other employees, employees who are
14 defined as peace officers pursuant to subdivisions (b) and (c) of
15 Section 830.2 of the Penal Code.

16
17 Article 7. Organizational Security
18

19 99566. Subject to the limitations set forth in this chapter,
20 organizational security shall be within the scope of representation.

21 99566.1. (a) Notwithstanding any other provision of law,
22 upon receiving notice from the exclusive representative of a transit
23 district employee who is in a unit for which an exclusive
24 representative has been selected pursuant to this chapter, the
25 employer shall deduct the amount of the fair share service fee
26 authorized by this section from the wages and salary of the
27 employee and pay that amount to the employee organization.
28 Thereafter, the employee shall, as a condition of continued
29 employment, be required either to join the recognized employee
30 organization or pay the fair share service fee. The amount of the
31 fee shall not exceed the dues that are payable by members of the
32 employee organization, and shall cover the cost of negotiation,
33 contract administration, and other activities of the employee
34 organization that are germane to its functions as the exclusive
35 bargaining representative. Agency fee payers shall have the right,
36 pursuant to regulations adopted by the board, to receive a rebate
37 or fee reduction upon request, of that portion of their fee that is not
38 devoted to the cost of negotiations, contract administration, and
39 other activities of the employee organization that are germane to
40 its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, and the signatures are obtained in one year. There shall not be more than one vote taken during the term of any collective bargaining agreement.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the transit district employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the transit district's compliance with this section. The recognized employee

organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of transit district employees against the transit district employer.

(f) The employer of a transit district employee shall provide the exclusive representative of an employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 475 U.S. 292.

99566.2. (a) Notwithstanding subdivision (i) of Section 99560.1, Section 99566, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment except as provided in subdivision (b).

(b) The employee may be required, in lieu of a service fee, to pay sums equal to the service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by the employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate funds, then to any such fund chosen by the employee. Either the employee organization or the transit district employer may require that proof of the payments be made on an annual basis to the transit district employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If the employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using that procedure.

99566.3. Every recognized or certified employee organization shall keep an adequate itemized record of its financial

1 transactions and shall make available annually, to the board and to
2 the employees who are members of the organization, within 60
3 days after the end of its fiscal year, a detailed written financial
4 report of its financial transactions in the form of a balance sheet
5 and an operating statement, signed and certified as to accuracy by
6 its president and treasurer, or corresponding principal officers. In
7 the event of noncompliance with this section, any employee within
8 the organization may petition the board for an order compelling
9 compliance, or the board may issue a compliance order on its
10 motion.

11
12 Article 8. Rights-Disputes Arbitration
13

14 99567. (a) An employer and an exclusive representative who
15 enter into a written memorandum of understanding may agree to
16 procedures for final and binding arbitration of disputes that may
17 arise under the memorandum of understanding or between the
18 parties.

19 (b) Where a party to a memorandum of understanding is
20 aggrieved by the failure, neglect, or refusal of the other party to
21 proceed to arbitration pursuant to the procedures provided in the
22 memorandum, the aggrieved party may bring proceedings
23 pursuant to Title 9 (commencing with Section 1280) of Part 3 of
24 the Code of Civil Procedure for a court order directing that the
25 arbitration proceed pursuant to the procedures provided in the
26 memorandum of understanding.

27 (c) An arbitration award made pursuant to this section shall be
28 final and binding upon the parties and may be enforced by a court
29 pursuant to Title 9 (commencing with Section 1280) of Part 3 of
30 the Code of Civil Procedure.

31 (d) The board shall submit a list of names of arbitrators to
32 employers and employee organizations upon their mutual request.
33 Nothing in this subdivision shall preclude the parties from
34 mutually agreeing to some other means of selecting an arbitrator.
35 The board shall also, if mutually requested to do so, designate an
36 arbitrator to hear and decide the rights dispute.
37



Article 9. Impasse Procedures

99568. Either an employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms that are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with rules that it shall prescribe. The mediator shall meet as soon as practical with the parties or their representatives, either jointly or separately, and shall take other steps that he or she deems appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable memorandum of understanding. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

99568.1. If the mediator is unable to effect settlement of the controversy within 15 days after his or her appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after the selection, select a chairperson of the factfinding panel. The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 99568.

99568.2. The panel shall, within 10 days after its appointment, meet with the parties or their representatives and

1 consider their respective positions. The panel may make additional
2 inquiries and investigations, hold hearings, and take other steps
3 that it deems appropriate. For the purpose of the hearings,
4 investigations, and inquiries, the panel may issue subpoenas
5 requiring the attendance and testimony of witnesses and the
6 production of evidence. The transit district employer shall furnish
7 the panel, upon its request, with all records, papers, and
8 information in its possession relating to any matter under
9 investigation by or in issue before the panel, except for those
10 records, books, and information that are confidential by statute.

11 99568.3. (a) If the dispute is not settled within 30 days after
12 the appointment of the panel, or, upon agreement by both parties,
13 within a longer period, the panel shall make findings of fact and
14 recommend terms of settlement, and the recommendations shall be
15 advisory only. Any findings of fact and recommended terms of
16 settlement shall be submitted in writing to the parties privately
17 before they are made public. The panel, subject to the rules and
18 regulations of the board, may make the findings and
19 recommendations public 10 days thereafter. During this 10-day
20 period, the parties are prohibited from making the panel's findings
21 and recommendations public.

22 (b) The costs for the services of the panel chairperson,
23 including per diem fees, if any, and actual and necessary travel and
24 subsistence expenses shall be borne by the board. Any other
25 mutually incurred costs shall be borne equally by the employer and
26 the exclusive representative. Any separately incurred costs for the
27 panel member selected by each party, shall be borne by the
28 selecting party.

29 99568.4. Nothing in this article shall be construed to prohibit
30 the mediator appointed pursuant to Section 99568, with the
31 permission of the parties, from continuing mediation efforts on the
32 basis of the findings of fact and recommended terms of settlement
33 made pursuant to Section 99568.3.

34

35 Article 10. Public Notice

36

37 99569. (a) All initial proposals of exclusive representatives
38 and of transit district employers, that relate to matters within the
39 scope of representation, shall be presented at a public meeting of
40 the transit district employer and thereafter shall be public records.



1 (b) Meeting and conferring shall not commence on an initial
2 proposal until a reasonable time has elapsed after the submission
3 of the proposal to enable the public to become informed and the
4 public has the opportunity to express itself regarding the proposal
5 at a meeting of the transit district employer.

6 (c) After the public has had the opportunity to express itself, the
7 transit district employer shall, at a meeting that is open to the
8 public, adopt a proposal, including any changes to its initial
9 proposal that the transit district employer deems appropriate based
10 on the public's comments.

11 (d) New subjects of meeting and conferring arising after the
12 presentation of initial proposals shall be made public within 24
13 hours. If a vote is taken on a new subject by the transit district
14 employer, the vote on the subject by each member voting shall also
15 be made public within 24 hours.

16 (e) The board may adopt regulations for the purpose of
17 implementing this section, which are consistent with the intent of
18 the section, that the public be informed of the issues that are being
19 met and conferred upon and have full opportunity to express their
20 views on the issues to the transit district employer, and to know of
21 the positions of the transit district employer.

22
23 Article 11. Miscellaneous
24

25 99570. The following proceedings set forth in this section are
26 exempt from the Ralph M. Brown Act (Chapter 9 (commencing
27 with Section 54950) of Part 1 of Division 2 of Title 5 of the
28 Government Code), unless the parties mutually agree otherwise:

29 (a) Any meeting and conferring discussion between a transit
30 district employer and a recognized or certified employee
31 organization.

32 (b) Any meeting of a mediator with either party or both parties
33 to the meeting and conferring process.

34 (c) Any hearing, meeting, or investigation conducted by a
35 factfinder or arbitrator.

36 (d) Any executive session of the transit district employer or
37 between the transit district employer and its designated
38 representatives for the purpose of discussing its position
39 respecting meeting and conferring or regarding any matter within

1 the scope of representation or instructing its designated
2 representatives.

3 99570.1. No memorandum of understanding shall contravene
4 any federal or state law, including rules and regulations
5 promulgated pursuant to such laws, prohibiting discrimination in
6 employment.

7 99570.2. If any provision of this chapter or the application of
8 such provision to any person or circumstance shall be held invalid,
9 the remainder of this chapter, or the application of such provision
10 to persons or circumstances other than those as to which it is held
11 invalid shall not be affected thereby.

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

